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FEDERAL COMMUNICATIONS COMMISSION

June 15, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S. W. - Room TWB-204
Washington, D. C. 20554

Re: Ex parte, CC Docket No. 00-65 / Application by SBC Communications Inc.,
Southwestern Bell Telephone Company, and Southwestern Bell Communications
Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region
InterLATA Services in Texas

Dear Ms. Salas:

On Wednesday, June 14, 2000, Leonard Cali, Sarah DeYoung and the undersigned, all of AT&T, met with Larry Strickling, Chief-Common Carrier Bureau and the following members of the Common Carrier Bureau staff: William Dever, Margaret Egler, Jake Jennings, Rhonda Lien and Audrey Wright. The purpose of the meeting was to discuss AT&T's opposition to the application that is the subject of the above-captioned proceeding. AT&T's views, as expressed in this meeting, were consistent with its written comments regarding this matter.

In addition, AT&T distributed the attached points in response to the Department of Justice evaluation of SBC's second application to provide in-region, interLATA services in Texas.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

cc: L. Strickling
W. Dever
M. Egler
J. Jennings
R. Lien
A. Wright

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Points in Response To DOJ Evaluation Submitted 6/13/00

DOJ's new evaluation does not support a finding of checklist compliance with respect to hot cuts for three fundamental reasons:

- 1) DOJ fails to apply the Commission's standards to SBC's CHC performance;
- 2) DOJ conditions its CHC-based conclusions on two "subsidiary findings" that the Commission, on this record, cannot properly make;
- 3) DOJ relies on expectations of future improvement, rather than on the statutory standard of demonstrated compliance today.

I. DOJ fails to apply the Commission's standards to CHC

A. Outages

DOJ fails to establish a meaningful time period for evaluating SBC's CHC outage performance (text at 12 says "March/April")¹

The relevant time period is December through February. Alternatively, DOJ should have looked to December – April. The CHC outage rate (for Dec. – April) is 8.2%.

DOJ appears to rely (see DOJ 12 n.30) on SBC data that excludes SOAC outages in February, but DOJ gives no rationale why that is proper.

DOJ is definitely excluding I-7 outages and that is likewise improper. If any "adjustment" to PPIG are to be made, then it should not be exclude outages that SBC admittedly caused (i.e. SOAC). Rather, the adjustment should include additional outages that SBC also caused, that SBC separately reported, and that the New York Order makes clear were counted against Bell Atlantic in determining that it caused outages on 4.5% of orders.

CHC outages Dec – April with I-7: 10.4%

CHC outages Dec – April with I-7 and w/o SOAC: 7.9%.

B. Timeliness

DOJ assesses CHC timeliness solely on the basis of PM 114.1 (delayed cuts). (DOJ 12 – finding 93.86% of CHC loops provisioned w/in 1 hour from Feb – April).

But New York Order is clear(¶ 296 n.946) that timeliness is a function of both late and early cutovers (here, PM 114.1 and PM 114).

¹ Footnote 30 refers to February, March, and April).

For CHC, timeliness for Dec – April is 90%, and that is before needed adjustments for overstating both PM 114 (reconciliation showed underreporting by 2.2%) and 114.1 (due to notification gap and failure to report LNP delays captured in PM 100 and PM 101).

II. No factual basis for the “two subsidiary findings” on which a CHC-based approval depends. See DOJ at 1, 13-14, 20.

A. First, no evidence that CLECs “may, in fact, freely choose between the CHC and FDT hot cut processes.” (DOJ 14).. In fact, the evidence demonstrates otherwise.

1. For over a year, and through May 2000, SBC has repeatedly stated that CHC is capacity constrained and has encouraged CLECs to use FDT for routine hot cut orders. See, e.g., Timeline Chart showing incentives for use of FDT (attached to AT&T 6/7 ex parte).

2. For over a year, SBC has reinforced this encouragement to use FDT by establishing a penalty structure for use of CHC. Under this structure, CLECs are charged for CHC orders under 20 lines, but not over 20 lines. As DOJ noted, “the structure of these charges itself suggests that its purpose is to push the CLECs to use FDT.” (DOJ 15 n.42). Moreover, the structure is that of a penalty – and “the record does not contain any justification of them as appropriately cost-based.” Id.

3. DOJ claims that SBC’s purported “policy change” that CLECs are able to use either CHC or FDT “is not, however, clearly reflected in the current record.” DOJ 15. There is in fact no evidence in the record of any such policy change. For example:

- * SBC’s affidavits, testimony before the TPUC, and correspondence with CLECs consistently reveal its position that FDT is to be used for routine hot cut orders;

- * SBC’s reply comments did not rescind its CHC charges, but tried to defend them;

- * As recently as May 26, SBC defended its inability to meet AT&T’s requested due dates for CHC orders in May by claiming that “we all understand that a limitless number [of CHC orders] cannot be handled on any given date and time” [Banneker 5/26 email].

4. More important still, SBC’s consistent encouragement of the use of FDT means there is no evidence in the record that SBC can support commercial volumes – or even today’s volumes – of hot cut orders using only the CHC process. For example,

- * “60 percent of hot cut loops [were processed] using the FDT process in April 2000.” (DOJ 14.) Thus, the lion’s share of hot cut orders were not processed using CHC in April, and those orders were not processed in compliance with the Commission’s minimum standards. There is simply no basis for concluding that – had all or a significant portion of those orders been submitted for CHC processing – SBC’s processing would have improved.

- * To the contrary, SBC was unable to process 27% of AT&T’s CHC orders in May on the requested due date – and its explanation was that CHC resources were not “limitless.” AT&T 6/7 ex parte at 7.

5. *In summary, the record shows that SBC has:*

- a) always said that CHC is capacity constrained,
- b) has created incentives and penalties to drive CLECs to use FDT,
- c) has never removed those incentives and penalties,
- d) has therefore succeeded in driving CLECs to use FDT for most orders,
- e) has never demonstrated that CHC is not capacity constrained, and
- f) cannot demonstrate on this record that CHC is not capacity constrained, because the CHC volumes are too low (due to SBC's own conduct), and because, even at those low volumes, capacity constraints are still evident – as shown by SBC's inability in May 2000 to handle AT&T's CHC orders on time.

B. Second, the Commission also cannot properly find “that SBC’s reported CHC outage data for April accurately reflect its performance.” (DOJ 14). The April AT&T outage data is unrepresentative of SBC’s overall performance because:

- 1. AT&T’s CHC order volumes were unusually low in April; and
- 2. Reliance on April data as indicative of a trend of improvement is misleading, because it ignores the significant order processing difficulties that occurred in May with AT&T’s CHC orders. If April data are considered notwithstanding the complete-when-filed rule, then there is no principled basis not to also consider May data.

III. Expectations Regarding Future Performance

ARE Not Evidence of Compliance With the Checklist Today

A. DOJ relies on a purported “policy change” to permit CLECs to “freely choose” CHC, when in fact it concedes that such a change is not “clearly reflected” in the record. DOJ 14-15. The Commission has previously rejected applications that rely on alleged promises of new policies that were not legally binding and fully implemented.

B. DOJ relies on SBC’s CHC performance alone even though it concedes that there is no basis in the record to justify the CHC charges as “cost-based” and no evidence that SBC has rescinded the charges. DOJ 15 n.42.

C. DOJ relies on SBC’s CHC performance alone even though it cites to no evidence that SBC has demonstrated that the capacity constraints that SBC has said exist (and that it reaffirmed to AT&T in 5/26 Bannecker e-mail) have been overcome.

D. DOJ relies on expectations of future improvement in FDT. DOJ 15-16.